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No. 27

IN THE

# Supreme Court of the United States

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

*Petitioner,*

*vs.*

ILLINOIS LIFE INSURANCE COMPANY,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF FOR THE RESPONDENT.

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## BRIEF FOR THE RESPONDENT.

### OPINION OF THE COURT BELOW.

The decision of the Circuit Court of Appeals for the Seventh Circuit, rendered November 26, 1935, rehearing denied January 9, 1936, is reported in 80 Fed. (2d), page 280, and affirms the opinion of the United States Board of Tax Appeals, reported in 30 B. T. A. 1160.

### STATEMENT OF THE CASE.

The statement of the case contained in the brief filed herein on behalf of the Petitioner is substantially correct. Attention is called to the further facts that by the Survivorship Investment Policy used by the Respondent (set forth at pages 3, *et sequitur* of the brief for the Petitioner), the

Respondent company, guarantees to set aside, in each year after the first, in "the Survivorship Investment Fund" the amount of the "Annual Contribution" set forth at page 4 of the policy; that no deductions shall be made from the said fund for any purpose whatsoever; that all contributions to said fund shall be accumulated at the rate of 3½ per cent per annum compound interest from the dates of the respective payments; and that at the end of twenty (20) years the company shall apportion to the surviving persistent holders of such respective policies a sum bearing the same proportion to the total amount of said fund as the total contributions thereto from premiums on the respective policies bear to the aggregate total contributions thereto from premiums paid on all policies in the Survivorship Investment Class issued in the same year as any policy under consideration. The company is further required, after any such policy shall have been in force more than three (3) years, to furnish the insured, upon written request, a statement of the amount of such policy's proportionate share of the Survivorship Investment Fund then accumulated, etc. (R. 20; Printed Record 16.)

## SUMMARY.

### I.

**THE SURVIVORSHIP INVESTMENT FUND IS A RESERVE REQUIRED BY THE LAWS OF ILLINOIS AND, AS SUCH, FORMS THE BASIS OF A DEDUCTION FROM GROSS INCOME UNDER THE REVENUE ACT OF 1928.**

Illinois Legislative Act of May 20, 1907, as amended;
1907 Ill. Session Laws, 367;
1917 Ill. Session Laws, 548;
1921 Ill. Session Laws, 483;
Cahill's Revised Stats. for 1929, Chap. 73, Par. 375, Secs. 1 and 5-c;
U. S. Revenue Act of 1928, Sec. 203.

### II.

**THE SURVIVORSHIP INVESTMENT INSURANCE ISSUED BY THE RESPONDENT IS A MODIFIED FORM OF TONTINE LIFE INSURANCE, AN OLD ESTABLISHED AND WELL RECOGNIZED FORM OF LIFE INSURANCE.**

*Connecticut etc. Insur. Co.* v. *Schaefer*, 94 U. S. 457.
*Holden* v. *Stratton*, 198 U. S. 202.
*Hiscock* v. *Mertens*, 205 U. S. 202.
*New York Life Ins. Co.* v. *Edwards*, 271 U. S. 109.
*Penn Mutual Co.* v. *Lederer*, 252 U. S. 523.
*Rothschild* v. *New York Life Ins. Co.*, 97 Ill. App. 547.
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*Gourley* v. *Northwestern Nat. Life Ins. Co.*, 94 Okla. 46; 220 Pac. 645.
37 Corpus Juris, 363.

1 Cooley's Briefs on Insurance (2nd Ed.) p. 162, 170.

*Briggs* v. *McCullough*, 36 Calif. 542.

*Endowment etc. Ass'n* v. *State*, 35 Kan. 253.

(a) The liability of an insurance company under tontine policies is contingent and the legal reserves required under such policies are life insurance reserves within the meaning of Section 203 of the Revenue Act of 1928.

*Avery* v. *Equitable Life Assur. Soc.*, 117 N. Y, 451, 23 N. E. 3.

1 Cooley's Briefs on Insurance (2nd Ed.) p. 172.

## III.

**NEITHER BY THE REVENUE ACT NOR BY THE DECISION OF THIS COURT IN HELVERING VS. INTER-MOUNTAIN LIFE INSURANCE CO. IS THE PHRASE "RESERVE FUNDS REQUIRED BY LAW" SO LIMITED AS TO EXCLUDE INSURANCE RESERVES REQUIRED AND SET UP TO COVER INSURANCE LIABILITIES WHICH SHALL ACCRUE UPON CONTINGENCIES OTHER THAN THE CONTINGENCY OF DEATH, SUCH AS THE LIABILITY FOR ENDOWMENT AND TONTINE PAYMENTS, BOTH OF WHICH ARE DEPENDENT UPON SURVIVORSHIP OF A FIXED DATE AND PERSISTENCE IN PAYMENT OF PREMIUMS.**

See Argument.

# ARGUMENT.

## I.

**THE SURVIVORSHIP INVESTMENT FUND IS A RESERVE REQUIRED BY THE LAWS OF ILLINOIS AND, AS SUCH, FORMS THE BASIS OF A DEDUCTION FROM GROSS INCOME UNDER THE REVENUE ACT OF 1928.**

The fundamental questions in the case at bar are whether the reserves involved are required by the law of Illinois, and whether they are insurance reserves as distinguished from solvency reserves. The pertinent Illinois statute in force in the taxable year 1929 is officially printed in the 1907 Illinois Session Laws, page 367 and the amendments bringing it to its present form are officially printed in 1917 Illinois Session Laws, 548, and 1921 Illinois Session Laws, 483 (Cahill's Ill. Rev. Stats., 1929, also 1935, Chap. 73, Par. 375). The applicable provisions are:

> "SEC. 1. That from and after January 1, 1908, no policy of life insurance shall be issued or delivered in this State or be issued by a life insurance company organized under the laws of this State, unless the same shall provide the following:
>
> * * * * *
>
> (5-c) * * * if any company shall issue any non-participating policy under the terms of which any stipulated part of premiums received is to be placed in a separate fund for subsequent apportionment, such company shall furnish the Department of Trade and Commerce each year a statement showing the number and amount of all such policies in force at the beginning of the year for which the statement is made; of all such policies issued and revived or terminated during the said year with the mode of termination; and the number and amount of all such policies in force at the end of said year. Also a statement showing any and all amounts provisionally set apart, ascertained or calculated or held awaiting apportionment upon

such policies according to classes, at the beginning of said year, the additions made to the said fund during the year with the source from which such additions arose, the deductions made from the said fund (if permitted by the contract) during the year with the reasons therefor and the amount of said fund at the end of the year; *which shall be carried as a distinct and separate reserve liability of the company for the benefit of the classes of policies from the premium payments on which the sum was accumulated.* No part of said fund prior to the time of distribution stipulated in the contract, shall be considered in determining the loan and cash and other surrender values provided for by this Act * * *." [Italics supplied.]

It is not disputed that Paragraph (5-c) of Section 1 applies to precisely the type of policy introduced as Joint Exhibit "A", and that the portions of the premiums allocated to said reserve fund are expressly required to

> "be carried as a distinct and separate reserve liability of the company for the benefit of the classes of policies from the premium payments on which the sum was accumulated."

Section 203 (a) (2) of the Revenue Act of 1928 describing the deductible reserves reads:

> "An amount equal to the excess, if any, over the deduction specified in paragraph (1) of this subsection, of 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, plus (in case of life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation) 4 per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only."

Petitioner's contention is that although the survivorship investment fund is a reserve required by Illinois law, it is not an *insurance* reserve and therefore furnishes no basis for a deduction.

## II.

**THE SURVIVORSHIP INVESTMENT INSURANCE ISSUED BY THE RESPONDENT IS A MODIFIED FORM OF TONTINE LIFE INSURANCE, AN OLD ESTABLISHED AND WELL RECOGNIZED FORM OF LIFE INSURANCE; THE LIABILITY OF THE INSURANCE COMPANY THEREUNDER IS CONTINGENT; AND THE LEGAL RESERVES REQUIRED UNDER SUCH POLICIES ARE LIFE INSURANCE RESERVES WITHIN THE MEANING OF SECTION 203 OF THE REVENUE ACT OF 1928.**

Although the petitioner goes only so far as to deny the deductibility of the reserve in question for the assigned reason that it is not a "*life insurance*" reserve, the argument must be followed through to its ultimate implication that the reserve is not a life insurance reserve because the survivorship investment benefit is not life insurance—or, better still, is not insurance—for if the tontine benefit is not *life* insurance, what kind of insurance is it?

The most common kinds of life insurance are ordinary life insurance and endowment insurance, in the latter of which the full amount of the insurance proceeds is payable to the insured in the event of his surviving a fixed period of years. There are other kinds of insurance, however, and among them are the tontine and semi-tontine methods of insurance.

Tontine insurance is described in 37 Corpus Juris, page 363, as follows:

> "Tontine insurance is a form of life insurance by which the policyholder agrees, in common with the other policyholders under the same plan, that no dividend, return premium, or surrender value shall be received for a term of years called the 'tontine period,' the entire surplus from all sources being allowed to accumulate to the end of that period, and then divided among all who have maintained their insurance in force, the beneficiary of an insured who dies within the tontine period being entitled only to the insurance provided for by the policy, and not to participation in

> the profits. This system of insurance is a modification of the original tontine principle, which took its name from Lorenzo Tonti, an Italian of the seventeenth century, who first conceived the idea and put it in practice, and the general idea of which was that money or property was loaned, owned, or invested for the benefit of a number of persons, who at first received its income, the share of a deceased member increasing the sum divisible among the survivors, and the last survivor taking the whole income or principal as the case may be."

For a somewhat more elaborate description and history of tontine insurance, reference is made to the testimony of Mr. John A. McCall, quondam President of the New York Life Insurance Company at the hearings before the New York Insurance Investigating Committee, Volume 2, Page 1420, and the testimony of Mr. Emory McClintock, quondam Actuary of the Mutual Life Insurance Company of New York, at the said hearings, Volume 3, Page 2350.

In more recent times insurance companies have ceased writing tontine policies, but (excepting in States where any form of tontine policy was prohibited by statute) various types of modified tontine policies have been issued under different names, such as semi-tontine, free-tontine, deferred dividend, etc.

These various forms of policies involve a combination of regular life insurance as to the return of a specific sum payable upon death, and another sum payable to the insured upon his survivorship of the tontine period. They are essentially the same as endowment insurance. In only two material respects do they differ: First, under the endowment plan the entire insurance proceeds are payable to the insured upon his surviving a specified date, whereas under the semi-tontine plan only the investment reserve is payable to the insured upon his surviving the specified date, and the remainder of the insurance proceeds is payable to the beneficiary upon the death of the insured. The second

difference is that under the endowment plan the amount payable is definitely fixed in advance, whereas under the tontine plan the amount payable is not fixed until the expiration of the period, because it consists of the entire amount of the tontine reserve divided among the then surviving members of that tontine class in the proportions of their contributions.

In 1 Cooley's Briefs on Insurance (2nd Ed.), 162, endowment policies and tontine policies are grouped together in a single section and at page 170, the author says:

> "This tontine plan does not affect the instrument as a policy of insurance on life, but merely engrafts thereon an endowment or profit-sharing feature."

The essential similarity of semi-tontine insurance and ordinary insurance of any other type is manifest upon considering these types from another viewpoint. Under an ordinary life insurance policy a specified amount is payable upon the death of the insured to designated beneficiaries. Under the tontine plan, upon the same event (death of the insured) an amount measured by the contributions of the insured plus accumulations thereon, is added to a fund held for a differently described group of beneficiaries, *i. e.*, for the persistent members of the tontine class who survive the stipulated period. This viewpoint has given rise to the question whether tontine insurance is really insurance or a gambling contract because of an alleged lack of insurable interest of the various class members in one another. The overwhelming weight of authority in this court, Illinois courts, and the courts of the several states is that tontine or semi-tontine policies are insurance contracts and not gambling contracts or some other species of undertaking. Semi-tontine polices like those in the case at bar were considered and their validity and character as life insurance policies were recognized by this court, in the cases discussed below.

*Connecticut Mutual Life Insurance Company* v. *Schaefer*, 94 U. S. 457, decided October, 1876, was an action against an insurance company to recover the amount of the policy upon the death of the insured and was brought by the beneficiary who was the divorced wife of the insured, the divorce having been granted subsequent to the issuance of the policy. The company sought to defend upon the ground of the cessation of any insurable interest in the beneficiary. At page 460, this court, per Mr. Justice Bradley, said:

> "It is well settled that a man has an insurable interest in his own life, and in that of his wife and children; a woman in the life of her husband; and the creditor in the life of his debtor. Indeed, it may be said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life. And there is no doubt that a man may effect an insurance on his own life for the benefit of a relative or friend; or two or more persons, on their joint lives, for the benefit of the survivor or survivors. *The old tontines were based substantially on this principle, and their validity has never been called in question.*" (Italics supplied.)

This case is extremely interesting in view of the fact that *life insurance* taken out by an individual on his own life for the benefit of a person unrelated to him at the time the policy becomes payable was held valid upon the analogy of that situation to the case of "the old tontines", of which this court says: "their validity has never been called in question." In other words, this court regards tontine (or semi-tontine) insurance as insurance taken out by the insured upon his own life for the benefit of all those persons who are in the same tontine class. These are all persons in whose life the insured has an interest, for they are all contributors to the fund raised for the benefit of the persistent survivors of the class.

*Holden* v. *Stratton*, 198 U. S. 202, was a bankruptcy proceeding involving the question of whether, under Section

70 of the Bankruptcy Act of 1898, the trustee in bankruptcy took title to certain life insurance policies on the life of the bankrupt. One of the policies was on the semi-tontine plan and was described in the statement of facts at page 203 as follows: "The policy for $5,000 was on what was termed the semi-tontine plan. An annual premium of $233.80 was required to be paid for ten years from the date of the previous policy, which had been surrendered, that is, until May 21, 1900, and therefore at the date when the bankrupts contracted the debts set forth in their schedules and at the date of the adjudications in bankruptcy, this period had expired and no further payment of premiums was necessary. Upon the death of the insured the amount of the policy was to be paid to the wife as the beneficiary, or, in the contingency of her prior decease, to the executors, administrators or assigns of the insured. It was provided, however, that upon the completion of the tontine dividend period of twenty years—on May 21, 1910—if the insured was then alive, he or his assigns, if creditors, might surrender the policy and receive its full cash value, or a non-participating policy, payable to the original beneficiary, or if she was not alive, to the executors, administrators or assigns of the insured, or the option was given to keep the policy in force and to withdraw the surplus to the credit of the policy in cash, or use the same to purchase additional insurance."

The bankrupt contended that Section 70 of the Bankruptcy Act did not apply because under the applicable laws of the State of Washington, where he lived, life insurance proceeds were exempt from all liability for debt, and Section 6 of the Bankruptcy Act gave effect to the exemption laws of the several states. The argument made to this court was that the tontine fund was not properly "life insurance" and hence such proceeds were not exempt under

the Washington statute, which argument is summarized by this court at page 209 of its opinion as follows:

> "The arguments supporting this contention are somewhat involved, but are all embraced in the following propositions: First, life insurance, it is said, in its strictest and technical sense, relates only to a fund realizable by death, and therefore the words 'all life insurance,' in the Washington statute, must be given that restricted meaning, hence the statute is inapplicable to one of the policies which partakes of the nature of an endowment," etc.

Such argument was disposed of at page 210 of this court's opinion where it is said:

> "The error in the argument is manifest. It is not to be doubted that the broad terms of the statute, as ordinarily understood, embraced both of the policies, and it would not be construction but legislation to restrict the meaning of the statute in accord with narrower legislation in other States, because in the judgment of a court it might be deemed equitable to do so."

That the proceeds of the tontine element of an insurance policy are "life insurance" and not some other species of property is also clearly recognized in another bankruptcy case, *Hiscock* v. *Mertens,* 205 U. S. 202, 213, which also involved conflicting claims of the bankrupt and the trustee in bankruptcy, the latter claiming that the bankrupt should be required to assign the insurance policies to him because of the absence of any express provision for a cash surrender value, whereas the bankrupt contended that the trustee was entitled to no more than the actual cash surrender value under the existing practices of the company, which amount he had tendered to the trustee. The policies in question were described in the master's report incorporated at pages 206-207 of this court's opinion as follows: "None of these express any agreement or provision whereby upon default the company shall pay a 'cash surrender value' to any person. By their terms the assured is excluded from any participation in dividends until the completion

of the tontine period, at which time all surplus and profits derived from such policies are to be divided among the persistent policies of that class then in force. At the expiration of the tontine period the persistent policy holder is given certain options, among them to withdraw in cash the policy's entire share of the assets, that is, the accumulated reserve, the amount of which is stated in each policy, and, in addition, the accumulated surplus apportioned to the policy."

The trustee was anxious to procure the policies because of the augumented value attributable to the tontine element which was not considered in determining the cash surrender value. At page 213 this court said:

> "Manifestly a policy cannot be declared in or out of the law according to its age, nor can anything be deduced from the investment features of tontine policies. Such policies were decided to be covered by the law in *Holden* v. *Stratton*. Whether the law should have included them is not our concern. Whatever may be said against it, it has seemed best to the legislature to encourage the extra endeavor and sacrifice which such policies may represent."

It was similarly argued in the case of *Briggs* v. *McCullough*, 36 Cal. 542, that the endowment proceeds of a ten year endowment policy were not insurance but simply the proceeds of "a covenant by the company, that in consideration of a certain sum deposited by McCullough, the company will pay him at the expiration of ten years, or sooner, if he dies, a certain other stipulated sum." It was also contended that such proceeds were consequently not within the protection of the California Statute which specifically exempted insurance proceeds from attachment. The court said at page 550:

> "The term 'life insurance' is not alone applicable to an insurance for the full term of one's life. On the contrary, it may be for a term of years, or until the assured shall arrive at a certain age. * * * It is an un-

> dertaking to pay the stipulated sum if he shall die within a specified term, which is of the very essence of life insurance. The fact that the company is to pay the agreed sum at the expiration of ten years, even though McCullough shall not have died in the meantime, does not divest it of its character of life insurance."

The principal difference between the endowment plan which is universally upheld and the semi-tontine or survivorship investment plan which petitioner now questions is that in the former a *fixed* sum is payable to the insured in the event of survivorship, whereas, under the latter, the endowment cannot be computed until the expiration of the tontine period, and it may be lost in the event of the death of the insured during such period.

Semi-tontine policies were involved in an income tax case before this court, *New York Life Ins. Co.* v. *Edwards*, 271 U. S. 109. In that case the insurance company contended, on the supposed authority of *Penn Mutual* v. *Lederer, Collector*, 252 U. S. 523, that the "overpayments" on mutual, level premium, deferred dividend policies should be deducted in determining the premium receipts which formed an element of the gross income in computing the insurance company's net taxable income. As appears at the end of page 115 in the *New York Life Insurance* case, the "deferred dividend" or "distribution" policies provided—"That no dividend or surplus shall be allowed or paid upon this policy, unless the insured shall survive until completion of its distribution period, and unless this policy shall then be in force. That surplus or profits derived from such policies on the distribution policy plan as shall not be in force at the date of the completion of their respective distribution periods, shall be apportioned among such policies as shall complete the distribution periods." Clearly, such deferred dividend policies were semi-tontine policies precisely like the survivorship investment policies now under consideration. In the prior case of *Penn Mutual Co.* v.

*Lederer, Collector,* (252 U. S. 523) this court had held that where mutual life insurance "overpayments" had been paid back or credited to the individual policyholders or treated as an abatement of premium of such policyholders, the amount thereof should not be included in the company's income. In the *New York Life Insurance Company* case, 271 U. S. 109, however, this court at page 116 held otherwise with respect to the deferred dividend policies, for the sole reason that, under the policy provisions above quoted, no part of the overpayment was repaid or credited to the policyholder but that

> "the aggregate of all such payments was held for distribution among policyholders alive at the end of the period. The receipts for the year were not really diminished."

In the *Penn Mutual* case, 252 U. S. 523, this court, at the bottom of page 532, couples "'Deferred Dividend' and other semi-tontine policies." In neither of the above two cases does this court intimate that a semi-tontine policy does not provide for *insurance* or for *life* insurance.

The validity of the tontine type of contract was directly attacked and sustained in Illinois in the case of *Rothschild* v. *New York Life Insurance Co.,* 97 Ill. App. 547. In that case the holder of several policies on the tontine plan (described as "the accumulation plan"—page 549) under which the reserve was distributable upon twenty-years' survivorship, filed a bill at the end of five years to set aside the policies, alleging that he had been misled as to their nature and had just ascertained "that said policies are cunningly devised gaming contracts, etc." (p. 551.) By the bill, complainant also sought to recover the amount of his contribution to the tontine or accumulation fund. Complainant also relied upon the statutory provision which "requires distribution of surplus at least once in every five years" (p. 555), and also "that a discrimination as to the

distribution of the surplus is made in favor of those who survive April 4, 1915, the accumulation period, and against those who may die before that time; that the former are to be regarded as one class and the latter another." The Illinois Appellate Court held the policies not subject to any of the foregoing objections. At page 556 the court says:

> "There is no discrimination against any member. Each member, in so far as surplus is concerned, makes the same contract. It is the same in principle as if each member contracted for a sum certain in the event of his death, plus a certain percentage of such sum, in case he should survive April 4, 1915.
>
> Lastly, it is contended that the effect of the provision as to the accumulation period, April 4, 1915, and the provision that no dividend shall be apportioned or paid before the end of that period, is that each policy holder bets with all the others that he will survive April 4, 1915, and therefore the provisions are in violation of section 131 of chapter 38, Hurd's Rev. Stat. 1899, in respect to gaming contracts. We can not concur in the view that the contracts are wagers or bets within the meaning of section 131. Section 134 of the same chapter is as follows:
>
> 'Nothing contained in sections 131 and 132 above, shall be (so) construed as to prohibit or in any way affect any insurance made in good faith for the security or indemnity of the party insured and which is not otherwise prohibited by law, nor to any contract of bottomry or *respondentia.*'
>
> The averments of the bill do not sustain the view that appellant's contracts of insurance were not made in good faith for his security or indemnity; and, as we have already held, they were not prohibited by law."

Inferentially, the validity of tontine policies was sustained by the Illinois Supreme Court in *Townsend* v. *Equitable Life Society,* 263 Ill. 432, in which the court held that a bill for an accounting by a surviving member of the tontine class was not vulnerable to demurrer where it was alleged that the distribution made by the company was not equitable and in accordance with the plan.

At the present time, few, if any, strictly tontine policies are issued because of the non-forfeiture laws of most states forbidding the forfeiture of life insurance policies after two or three years' premiums have been paid. This has brought about a modification of the tontine plan which is now usually coupled with and embodied in an ordinary life insurance policy, the principal proceeds of which are payable upon death. This plan of insurance is known under divers names, such as semi-tontine, survivorship investment policies, investment reserve policies, accumulation reserve policies, etc. The theory underlying the modern tontine policy is set forth in the definition of the word tontine in the Century Dictionary, as follows:

> "This modification of ordinary life insurance has been adopted as optional with the insured for the purpose of countervailing the tendency to burden long lived and persistent policy holders with a large amount of premiums in comparison with those whose lives fall in shortly after obtaining insurance. The effect is to reduce the sum payable on deaths after but few years payment of premiums and to increase the sum payable on deaths occurring after a given number of years."

The tontine element of such semi-tontine life insurance contracts is a feature designed to make the life insurance investment more attractive to the person of exceptionally long lived stock whose actual expectancy can reasonably be presumed to exceed the ordinary expectancy of his age, upon which the premiums are based, and to make the possible investment gain to him upon survivorship commensurate with the excessive cost to him because of the computation of the premium upon such ordinary shorter expectancy. While it is true that upon the hearings before the New York Insurance Investigating Committee in 1905, the eminent counsel for the Joint Committee, now the Chief Justice of this Court, questioned the economic wisdom and necessity of this type of policy, the fact remains that under the Illinois Legislative Act of 1907, adopted to remedy

certain abuses disclosed at the New York hearing, this type of policy remains a valid policy under the Illinois law, and it must be left to the judgment of the insured whether he desires this type of policy, an ordinary life insurance policy, an endowment policy, an annual dividend policy, some other type of policy, or no insurance whatever.

## III.

**NEITHER BY THE REVENUE ACT NOR BY THE DECISION OF THIS COURT IN HELVERING v. INTER-MOUNTAIN LIFE INSURANCE CO. IS THE PHRASE "RESERVE FUNDS REQUIRED BY LAW" SO LIMITED AS TO EXCLUDE INSURANCE RESERVES REQUIRED AND SET UP TO COVER INSURANCE LIABILITIES WHICH SHALL ACCRUE UPON CONTINGENCIES OTHER THAN THE CONTINGENCY OF DEATH, SUCH AS THE LIABILITY FOR ENDOWMENT AND TONTINE PAYMENTS, BOTH OF WHICH ARE DEPENDENT UPON SURVIVORSHIP OF A FIXED DATE.**

There is no contradiction of Petitioner's assertion that the terms "reserve" and "reserve funds required by law" do not, for the purpose of determining income tax deductions, embrace all reserves established by an insurance company, nor even all reserves which the law or an administrative official may require an insurance company to set up. It may be assumed, also, that the deduction is to be confined only to such reserves as are required to meet an insurance liability. It is not correct, however, to say that a reserve is deductible only if computed on the basis of *mortality tables* plus an assumed rate of interest. It is true that the reserves for life insurance payable upon the event of death are computed upon the basis of mortality tables, but that is only because the mortality table is the most accurate gauge for determining the probable date of the maturity of that particular obligation. If the maturity of an insurance obligation is, by contract, fixed at a definite date in the future, there is, of course, no occasion to con-

sult or employ mortality tables. The question, therefore, is not what mechanics are adopted for determining the approximate maturity or the amount of the reserves, but is whether the reserve is an *insurance* reserve or some other kind of reserve. It is true that if the reserve is not an insurance reserve but a mere solvency reserve (such as will be discussed in greater length hereinafter) it is not deductible. This brings us back, therefore, to the question of whether the company's obligation upon a semi-tontine insurance policy is an insurance obligation, which question has been discussed in the preceding section of this brief. There is nothing in the decision of this court in *Helvering* v. *Inter-Mountain Life Insurance Co.* 294 U. S. 686, or in any other decision of this court, at variance with the Respondent's contentions. To present a clearer exposition of the development of the law, we shall discuss the earlier decisions of this court in chronological order.

*McCoach* v. *Insurance Company of North America,* 244 U. S. 585, decided June 11, 1917, was an action brought by the insurance company to recover a part of the excise taxes exacted from it under the Capital Stock Tax Act of 1909. The act imposed a tax measured by the net income over $5,000, and defined net income as the gross income less enumerated deductions including, in the case of insurance companies (not restricted to life insurance companies), "the net additions, if any, required by law to be made within the year to reserve funds."

The Commissioner under these statutes required the taxpayer to show the net amount of unpaid losses and claims as an item among its liabilities. The Supreme Court distinguished between amounts required to be held against unpaid losses under the Pennsylvania act and "reserves" within the meaning of the act of Congress. At page 589, the court, per Mr. Justice Pitney said:

"Conceding full effect to this, it still does not

answer the question whether the amounts required to be held against unpaid losses, in the case of fire and marine insurance companies, are held as 'reserves,' within the meaning of the Pennsylvania law or of the act of Congress, however they may be designated upon the official forms. As already appears, *the Pennsylvania act specifically requires debts and claims of all kinds to be included in the statement of liabilities and treats them as something distinct from reserves.* The object is to exercise abundant caution to maintain the companies in a secure financial position.

*The act of Congress*, on the other hand, *deals with reserves* not particularly in their bearing upon the solvency of the company, but *as they aid in determining what part of the gross income ought to be treated as net income for purposes of taxation.* There is a specific provision for deducting 'all losses actually sustained within the year and not compensated by insurance or otherwise.' And this is a sufficient indication that losses in immediate contemplation, but not as yet actually sustained, were not intended to be treated as part of the reserve funds; that term rather having reference to the funds ordinarily held as against the *contingent liability on outstanding policies.*

In our opinion the reserve against unpaid losses is not 'required by law,' in Pennsylvania, within the meaning of the act of Congress.'' (Italics supplied.)

The analogy drawn at the end of the second paragraph quoted, between the deduction for losses actually sustained and losses in immediate contemplation, is an apt and interesting one, such losses, as the court points out, not being a ''contingent liability on outstanding policies'' and the word ''reserves'' as employed in the Capital Stock Tax Act, ''having reference to the funds ordinarily held as against the contingent liability on outstanding policies.''

The liability of the Illinois Life Insurance Company respecting the investment feature of the survivorship investment fund policies was clearly of the latter class—*i. e.*, ''contingent liability on outstanding policies,'' and not of the former class, ''losses actually sustained within the

year" or "losses in immediate contemplation, but not as yet actually sustained."

In the Inter-Mountain Insurance Company case, however (more fully discussed at page 27, *infra*) the liabilities in question were of the former class, for the court there was dealing with liabilities upon matured coupons which the insured could, within the taxable year, turn in in exchange for cash. In other words, the coupons represented liabilities actually sustained within the year.

*Maryland Casualty Co.* v. *United States*, 251 U. S. 342, decided January 12, 1920, was an action by an insurance company engaged in writing employers' liability and other branches of insurance, but not including life insurance, to recover income taxes under the 1913 Act and excise taxes under the 1909 Act theretofore paid by the company.

We are interested only in the second and third essential questions decided by this court. These questions are stated at pages 344-345 as follows:

> "(2) May the amount of gross income of the claimant be reduced by the aggregate amount of the taxes, salaries, brokerage and reinsurance unpaid at the end of each year, under the provisions in both the excise and income tax laws allowing deductions of 'net addition, if any, required by law to be made within the year to reserve funds'?
>
> (3) Should the decrease in the amount of reserve funds required by law for the year 1913 from the amount required for 1912 be treated as 'released reserve' and charged to the company as income for 1913?"

At page 348, this court points out:

> "In the same words the Excise and Income Tax Acts provide that 'the net addition, if any, required by law to be made within the year to reserve funds' may be deducted from gross, in determining the amount of net, income to be taxed."

At page 350, the court said, per Mr. Justice Clarke:

> "The term 'reserve' or 'reserves' has a special

meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, *variously* computed or estimated, which with accretions from interest, is set aside, 'reserved,' as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, *future unaccrued and contingent claims, and claims accrued, but contingent and indefinite as to amount or time of payment.*" (Italics supplied.)

Nothing in the foregoing language was modified or limited by the subsequent decision of this court in *United States* v. *Boston Insurance Co.*, 269 U. S. 197.

The reserves in question in the case at bar are, within the foregoing language, contingent and indefinite as to amount. At page 351, the court said:

> "That provision for the payment of ordinary expenses such as we are considering was not intended to be provided for and included in 'reserve funds' as the term is used in the acts of Congress is plain from the fact that the acts permit deductions for such charges from income if paid within the year."

The reserves here in question obviously do not fall within the class above indicated, for there is nothing in the Revenue Act of 1928 which authorizes the deduction of such survivorship investment fund payments in the years in which made. Section 203 (a) (5) permits the company, in determining net income, to deduct from gross income "investment expenses paid during the taxable year." By no stretch of the imagination can the survivorship investment fund, held by the company exclusively for the benefit of the holders of policies of that class, be regarded as an investment expense. That phrase must rather be restricted to such items as taxes, salaries, brokerage, and reinsurance as were involved in the Maryland Casualty Company case.

As to the third question involved in the Maryland Casualty Company case, it appeared that the "unpaid lia-

bility loss reserve" decrease in 1913 exceeded the "unearned premium reserve" increase, and the government contended that such excess, which it designated "released reserve," must be added to gross income for 1913 on the theory that it in that year became "free income;" and that the company then, for the first time, "could use it for its general purposes" (page 351). At page 352, this court said:

> "Reserves, as we have seen, are funds set apart as a liability in the accounts of a company to provide for the payment or reinsurance of specific, contingent liabilities. They are held not only as security for the payment of claims but also as funds from which payments are to be made."

The reserves in question in the present case are strictly funds set apart to cover contingent liabilities as above defined.

At page 352, this court continued:

> "If, in this case, it were due to an over estimate of reserves for 1912 with a resulting excessive deduction for that year from gross income and if such excess was released to the general uses of the company and increased its free assets in 1913, to that extent it should very properly be treated as income in the year in which it became so available, for the reason that in that year, for the first time, it became free income, under the system for determining net income provided by the statute, and the fact that it came into the possession of the company in an earlier year in which it could be used only in a special manner, which permitted it to become nontaxable would not prevent its being considered as received in 1913 for the purposes of taxation, within the meaning of the act."

Clearly, the additions to the survivorship investment fund in the case at bar never became "free income" of the taxpayer, and never were "released to the general uses of the company," and never "increased its free assets." Incidentally, in the Maryland Casualty Company case, this

court also held against the Government on the third question because of a lack of any showing that the excess had been released "to the free beneficial use of the company in a real, and not in a mere bookkeeping sense," and that the deduction in prior years had been "restored to the free use of the claimant in 1913." There is, of course, no conceivable theory upon which it can be contended that the additions to the survivorship investment fund in question were ever "free income" of the company, or were ever released to the company "in a real, and not in a mere bookkeeping sense," or were ever "released to the general uses of the company," or ever "increased its free assets." The only conceivable theory upon which the company could ever realize these reserves as "free income," is upon the wild conjecture that every member of the tontine class should have died or permitted his policy to lapse before the expiration of the tontine period and, in such almost impossible event, the company would then realize a taxable income, but never before that time.

*United States* v. *Boston Insurance Company,* 269 U. S. 197, decided November 23, 1925, was precisely like *McCoach* v. *Insurance Company of North America,* excepting that the tax involved was an income tax under the 1916 Act instead of an excise tax. The claimant carried on the business of issuing fire and marine insurance policies, but the 1916 Act did not distinguish between life insurance and other insurance companies. At page 202, this Court, per Mr. Justice McReynolds, referred to the controlling case of *McCoach* v. *Insurance Company,* and said:

> "We there distinctly ruled that the 'reserve fund' of the Federal Act did not include something held by a fire and marine insurance company to cover *accrued but unsettled claims for losses.*"

The last sentence might have been amplified by including also companies issuing life insurance policies. It is

sufficient to say that the survivorship investment reserve fund involved here did not cover an "accrued but unsettled claim for losses." And it must be borne in mind that the reserves covering matured coupons, as were involved in the *Inter-Mountain Insurance Company* case, did cover that very thing—an accrued but unsettled claim which the insured had the immediate right to convert into dollars upon surrendering his coupons.

*New York Life Insurance Company* v. *Edwards*, 271 U. S. 109, decided April 19, 1926, was an action by a life insurance company to recover a portion of the income tax paid for the year 1913. Of the five questions considered by the Supreme Court only two are even remotely related to the question in the case at bar.

The 1913 Act contained the proviso:

> "That * * * life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year * * *." (Page 115.)

The Insurance Company, a New York corporation without capital stock, did business on the mutual, level-premium plan and issued, among others, "deferred dividend" policies. These closely resembled the survivorship investment fund policies involved in the case at bar and provided:

> "That no dividend or surplus shall be allowed or paid upon this policy, unless the insured shall survive until completion of its distribution period, and unless this policy shall then be in force. That surplus or profits derived from such policies on the distribution policy plan as shall not be in force at the date of the completion of their respective distribution periods, shall be apportioned among such policies as shall complete the distribution periods. (Page 115.)

The company contended that the entire amount of the

deferred dividend should be deductible. This contention is disposed of by the court, per Mr. Justice McReynolds, at page 116 as follows:

> "It is insisted that within the meaning of the quoted provision [the proviso above quoted] each deferred dividend policyholder's overpayment was actually credited to him during the year; but we cannot accept this theory. The aggregate of all such payments was held for distribution among policyholders alive at the end of the period. *The receipts for the year were not really diminished.*"

It will be perceived that that case involved an attempted deduction of the entire amount of deferred dividends and not merely of reserves or a portion of the reserves required by law for such deferred dividends. There is nothing in the report to indicate that any such reserve was either maintained or required. The last sentence quoted "the receipts for the year were not really diminished" indicates that no such reserve was required. In the case at bar, however, the statute specifically required the maintenance of the reserves in question and to the extent that the reserves were maintained, the receipts (free income) were really diminished.

At page 119, this court considered the deductibility of a special fund to meet unreported losses of policyholders dying during the calendar year, which special fund the Superintendent of Insurance required to be set aside. On authority of the McCoach and Boston Insurance Company cases the court held that these "reserves" were not such as were required by law within the meaning of the Internal Revenue Act. Referring to the McCoach and Boston Insurance Company cases, this court said at page 119:

> "It is unnecessary now to amplify what was there said. The item under consideration represented a liability and not something reserved from premiums to meet policy obligations at maturity."

The item in the case at bar does not fall within the fore-

going description since it does not represent an immediate liability, but, on the contrary, is "something reserved from premiums to meet policy obligations at maturity," and is contingent both as to identity of the policyholders at the termination of the tontine period, and the amount then to be distributed.

Finally we come to the recent decision of this court in *Helvering* v. *Inter-Mountain Life Insurance Co.* 294 U. S. 686, decided April 1, 1935. That case involved the deductibility of a percentage of reserves required by statute to be set aside to cover the liability upon matured coupons which upon their maturity had ceased to be contingent liabilities and had become debts immediately payable to the policyholders or subject to application as the policyholders' funds in the manner specified in their policies.

The pertinent facts were stated by Mr. Justice Butler at page 688 as follows:

> "The record contains a specimen policy for $10,000 applicable to age 35, issued in consideration of 20 annual premiums of $420.90. Attached are 19 coupons maturing serially on anniversary dates of the policy, beginning with the first and ending with the nineteenth. Each coupon is a promise that at its maturity the company will pay the amount specified to the owner of the policy.
>
> The policy states: The company will credit insured the face amount of any matured coupon as it becomes due and pay compound interest thereon, thereby creating a fund to the credit of the insured which may be applied to the payment of premiums or *at any time withdrawn in cash;* and if not so applied or withdrawn prior to his death, it will pay the coupon values with interest to date of death to the beneficiary in addition to the face amount of the policy." (Italics supplied.)

It will at once be perceived that "each coupon is a promise that at *its* maturity the company will pay the amount specified." This single sentence illustrates the wide divergence of the two cases. In a case involving reserves against ma-

tured and unpaid coupons there is a fixed and definite liability *immediately payable* upon the maturity of each coupon. When that day arrives all element of contingency vanishes and the insurance company immediately becomes a debtor in the amount specified. It is true that the insured has certain options even under the coupon plan, but those options only relate to the application which shall be made by the insurance company of the moneys in its hands belonging to the insured. The gist of the decision in the *Inter-Mountain Life Insurance Company* case is that the only reserves properly deductible are those providing for *contingent* liabilities, whereas the liability of the insurance company upon *matured coupons* is not contingent, or as this court said: "Liability on the matured coupons depends upon no contingency." This is obviously true, and it is equally obvious that the liability of the respondent upon its survivorship investment policies is contingent. The two plans are wholly different. The matured coupons involved in the *Inter-Mountain Insurance Company* case represented actual *immediate* liabilities of the insurance company and debts actually then due and owing from the insurance company to the coupon-holders. The liability of the respondent under the policies here involved is, however, a *future* and *contingent* liability which may or may not at some future date ripen into an indebtedness to the insured.

In 1 Cooley's Briefs on Insurance (2nd Ed., 1927), it is said at page 172:

> "Until the expiration of the tontine period, the liability of the company is contingent (*Avery* v. *Equitable Life Assur. Soc.*, 117 N. Y. 459, 23 N. E. 3). On the expiration of the period, the relation of debtor and creditor arises."

The several cases cited by that author amply support the text. The same author continues at page 172:

> "So, where the insured died a short time before the

> expiration of the period, his beneficiary was entitled to no share in the tontine fund."

That is, of course, quite different from the liability of the insurance company in the *Inter-Mountain Insurance Company* case, for in that case there was a debtor-creditor relationship immediately upon the maturity of the several coupons and had insured died before payment of any such matured coupon the company would have remained *pro tanto* liable to his estate but for the presence of a clause in the policy making the amount payable to the beneficiary.

The distinction we have pointed out between the rights of the tontine policyholders in the case at bar and the rights of the holders of matured coupons in the *Inter-Mountain Life Insurance Company* case is borne out by the language of this court in *Duffy* v. *Mutual Benefit Co.*, 272 U. S. 613. That was a proceeding involving the determination of the insurance company's excess profits tax, the specific question being whether the legal reserves set up by the company constituted "invested capital." The insurance company contended that they did not constitute capital, but represented an existing liability. The Supreme Court held otherwise, however, saying at page 618:

> "These assets, thus constituted, have never represented indebtedness any more than the capital of a stock corporation subscribed by its stockholders represents indebtedness. Until the maturity of a policy, the policyholder is simply a member of the corporation, with no present enforceable right against the assets. Upon the maturity of the policy he becomes a creditor with an enforceable right. Then for the first time there is an indebtedness. See *Mayer* v. *Attorney General*, 32 N. J. Eq. 815, 820-822."

This very distinction exists in the cases we are now considering. In the *Inter-Mountain Life Insurance Company* case the coupons involved had matured so that the policyholders had become creditors and there was an existing indebtedness. In the case at bar, however, the policies had not matured, and prior to the expiration of the tontine pe-

riod the policyholders had no present enforceable rights against the assets of the company. Whether or not they ever would obtain such rights in the future is involved in the contingencies of survivorship and persistence.

It thus appears that the *Inter-Mountain Life Insurance Company* case is in no respect parallel with the case at bar and is valueless as authority under the facts involved in the present case. Inasmuch as petitioner's entire case is founded upon the supposed authority of the *Inter-Mountain Life Insurance Company* decision, petitioner's case is not supported by any authority. On the other hand, the facts involved take the present case outside the express limitations announced in the rule in the *Inter-Mountain Life Insurance Company* case wherein this court predicated its decision on the fact that the case involved the deductibility of reserves for *matured coupons*. These the court held to be an *immediate* fixed indebtedness, free from any contingency, whereas in the present case there can be no actual liability of the company to pay until the expiration of the tontine period, and even then such liability as to each member of the class is contingent upon survivorship and persistence.

There is, however, one sentence in the opinion of this court in *Helvering* v. *Inter-Mountain Insurance Co.* which may need clarification. At page 690 it is said:

> "Life insurance matures only upon the death of the insured and the life reserve is based upon that contingency, whereas liability on the matured coupons depends upon no contingency."

We think it a fair assumption that in employing this sentence the court meant to cover the insurance company's full liability under its policy, both contingent and non-contingent. It is evident, however, that there is an excluded middle ground not embraced in that sentence—*i. e.*, a contingent liability maturing upon a contingency other than

death. If the opening words of the sentence, "life insurance matures only upon the death of the insured," were taken as literally true, then the court must have held, contrary to all earlier decisions, that an endowment policy, which also matures upon survivorship instead of death, is not a life insurance policy. Obviously, the controlling factor in the Inter-Mountain Insurance Co. decision is not found in the opening words of the last quoted sentence—that the coupons did not mature upon death—but rather in the closing words of the same sentence—"liability on the matured coupons depends upon no contingency." This reading of the said sentence brings it into harmony with all the earlier decisions of this and other courts. The foregoing is perhaps a rather lame way of restating what the Circuit Court of Appeals said in its opinion in this case. (Printed Record, Pages 33-34)

> "It is said that the words of the Supreme Court in the Inter-Mountain case defining life insurance reserves are to be construed strictly and that we must eliminate from deductible reserves all funds that are not within the original and elemental meaning of life insurance."
>
> • • • • • •
>
> "Strictly speaking, perhaps, life insurance does not necessarily include guaranteed cash surrender values. Rather, if we speak literally, life insurance probably includes only policies of insurance, the provision of which is that in case of death, while the policy is in full force and effect, the face thereof shall be paid. But as insurance has developed, life insurance has come to mean more than mere payment of losses in case of death. It has come to include cash surrender values, guaranteed loan values, dividend, endowment, and tontine funds and other similar variations of the original insurance contract, brought into existence and embodied in insurance contracts to protect the insured, not only in case of death, but also, in case of survivorship. All cash surrender values, guaranteed loan values, tontine, endowment, and dividend payments are payable, not because of death, but because of invest-

> ment of premiums for the benefit of an insured who has survived; and if we begin to eliminate such of these funds as represent the accumulation of investment of premiums, in the end we shall be compelled logically to eliminate all of them and also to limit our definition of 'reserves required by law' to such reserves only as are created as a fund against the payment of death claims. This we do not believe was the intent of Congress; nor do we believe that the Supreme Court intended such construction of the statutory language in the Inter-Mountain case."

That Congress did not regard the contingency of death as the sole or essential controlling factor in determining the deductibility of reserves is manifest from other provisions of the 1928 Revenue Act. For example, Section 203 (a) (2) itself provides for the deduction of reserve funds even though "not required by law" in the case of life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan continuing for life, and not subject to cancellation, and Section 203 (a) (4) expressly provides for a reserve for deferred dividends as follows:

> "An amount equal to two per centum (2%) of any sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year), the payment of which is deferred for a period of not less than five (5) years from the date of the policy contract."

By this latter section, Congress has expressly authorized the deduction of a reserve for a liability much more closely approximating such a fixed immediate liability as arose upon the matured coupons in the Inter-Mountain Insurance Company case than does the liability of the respondent upon the survivorship investment policies involved in the case at bar. The deferred dividends covered by Section 203 (a) (4) are liabilities definite both in amount and as to identity of obligee but merely deferred as to date of pay-

ment, whereas respondent's Survivorship Investment Fund liabilities are deferred as to date of payment and *contingent* in amount and as to identity of obligee. Manifestly, the Congress inserted Section 203 (a) (4) only because deferred dividends of the type included therein were not contingent liabilities and the Congress considered the element of contingency as the determinative factor in distinguishing life insurance reserves from solvency reserves.

**Illinois Statutes.**

Commencing on page 19 of the brief for the Petitioner, attention is directed to Section 10 of the Act of March 26, 1869, as Amended, which required the Department of Trade and Commerce to make annual valuations of outstanding policies, etc., on the basis of prescribed mortality tables with a prescribed rate of interest. This valuation furnishes the basis for determining the reserve required upon that element of the insurance obligation maturing upon death. There is nothing in the statute or out of the statute, however, which would prevent any other required reserve from being a life insurance reserve. The fact that the Illinois statute requires certain life insurance reserves to be computed upon the basis of mortality tables and prescribed interest rates does not demonstrate that reserves required to be computed upon any other basis are not life insurance reserves. The fact is, of course, that prior to the upheaval in the insurance business in the early nineteen hundreds, insurance companies were required to maintain reserves only upon those life insurance obligations which matured upon death and which consequently were computed on the basis of mortality tables and prescribed interest rates. They also wrote life insurance upon the deferred dividend plan—upon the tontine plan—upon the semi-tontine plan—and other forms of life insurance as to which the statutes of practically all

states were silent as to maintenance of reserves and the safeguarding of the obligations contingently due to the insured in the event of survivorship. It was not questioned then, and we believe it is not questioned now, that such obligations were in every sense of the word insurance obligations, even though they matured not upon death but upon survivorship, and, in fact, were contingent upon survivorship. Then, when as a result of the labors of the Frick Investigating Committee, the series of law suits against the Equitable Life Assurance Society and others, and finally the disclosures before the New York Insurance Investigating Committee, the unfair practices of insurance companies in this and other respects became generally known, the insurance laws of New York, Illinois, and most other states were amended to remedy the existing abuses. Upon the recommendation of the Investigating Committee, the New York insurance laws prohibited the writing of nonparticipating insurance policies. The Illinois legislature did not go quite so far and allowed nonparticipating semi-tontine policies to be written, provided that certain reserves were maintained to guarantee payment at maturity. Whereas formerly the premium collected from the nonparticipating semi-tontine portion of the policy could be carried in the company's general surplus where it might easily be dissipated in any of the numerous ways disclosed at the New York Committee hearings, the statute of May 20, 1907 required the maintenance of reserves which could not be so dissipated. Of course, the new Act did not require that the reserves be based upon mortality tables, for what sense could there be in requiring the employment of mortality tables where the maturity date of the obligation is specifically fixed by the contract! The new Act did, however, require the maintenance of reserves to safeguard what had until then been regarded and still are regarded as insurance obligations. The pertinent portion

of the Act in question has been set forth hereinbefore at page 5.

## Conclusion.

The statutes and authorities sustain the following conclusions:

1. That the Survivorship Investment Fund policies issued by the Respondent are life insurance policies with respect to the benefits payable upon survivorship as well as with respect to the benefits payable upon death.

2. That the liability of the Respondent with respect to the survivorship benefits is an insurance liability contingent upon the insured surviving the tontine period and persisting in the payment of premiums for such period.

3. That the Illinois Statute requires the maintenance of the reserve which the Respondent has established to mature such survivorship liability.

4. That the reserves required by law to safeguard contingent liabilities, as distinguished from mere solvency reserves to protect immediate non-contingent liabilities resulting from operation or investments, are within the purview of Section 203 (a) (2) of the Revenue Act of 1928, and are deductible in determining taxable net income of life insurance companies for the year 1929.

5. That the Survivorship Investment Fund Reserve maintained by the Respondent pursuant to the express requirements of the Illinois Statute are such contingent insurance reserves and are deductible as aforesaid.

It is therefore respectfully submitted that the decision of the Court below should be affirmed.

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